

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No.: 5:17-cv-00534-H

EPIC GAMES, INC.,

Plaintiff,

v.

C.R.,

Defendant.

**THIRD DECLARATION OF
CHRISTOPHER M. THOMAS**

I, Christopher M. Thomas, hereby declare and state as follows:

1. I am over 18 years of age and suffer from no known disability. Except where made on information and belief, I have personal knowledge of the facts set forth herein. All the statements in this declaration are true and correct.

2. I am currently, and for all times relevant to this matter have been, an attorney at Parker Poe, Adams & Bernstein LLP and counsel for Epic Games, Inc., Plaintiff in the above-captioned action (“Epic”).

3. In a video titled “PLAYING WITH MOST KNOWN FORTNITE HACKER!!! (He Carries Me!),” published June 4, 2018 on YouTube, the person who posted the video and acts as its host, “Ripped Robby,” plays *Fortnite* with Defendant, to whom he refers as “Sky Orbit,” as the “MOST KNOWN FORTNITE HACKER.”

4. The description in this video’s post reads verbatim:

MOST KNOWN FORTNITE HACKER! Hey guys in todays video a played fortnite with the most known fortnite hacker... Sky Orbit! You

might of heard of him from many different places, like pewdiepie and many news outlets! He was the kid that fortnite tried to sue over hacking their game!!

5. As of the date of this writing, this video has over 101,900 views and Ripped Robby's channel has over 1 million subscribers.

6. In this video, Ripped Robby introduces Defendant, who is playing under the username "ItsOrbitz." as "the world's most famous Fortnite Hacker, Sky Mother-f**king Orbit!" This part of the video takes place at the following time in the video: 0:15-0:23.¹

7. In this video, C.R. admits that he cheats at Fortnite, at one point saying "Yeah, I mean [Fortnite's] a fun game you know. It was shit when I first, you know, cheated on it." (4:48 – 4:54/15:50)

8. During this video, Ripped Robby ("RR") and Defendant ("CR") have the following exchange:

RR: "Oh yeah, I wanted to ask . . ."

CR: "Uh huh"

RR: "In the, uh, news stuff, it says your mom was like defending you. Is that . . ."

CR: "So, yeah . . ."

RR: "Is that true, because of your age, right, she had to . . ."

CR: "Um, yeah, we had to get a lawyer, she had to . . ."

RR: "Damn bro, so you guys probably had to spend a little bit of money on that, that sucks . . ."

CR: "Nah, my mom knew it all. We didn't, we didn't make any money, we didn't, uh, have to spend any money on anything."

RR: "That's, uh, okay, okay, that's even, that's better."

(8:00-8:33)

9. On information and belief, Defendant also appears in a YouTube video in which he is being shown cheating at *Fortnite*. This video is titled "Fortnite Streamer Caught

¹ For the rest of this declaration, parentheticals indicating the part of the video in which the quoted statements take place are included.

Aimbotting LIVE!” and was published January 25, 2019 by “ShelbyRenae” on her YouTube channel. (Available at: <https://www.youtube.com/watch?v=IcEZMMEvQbY>) (hyperlink removed) (the “ShelbyRenae video”). As of the date of this writing, the ShelbyRenae video has over 26,000 views.

10. The ShelbyRenae video features a capture of a video stream posted by another YouTuber titled “FORTNITE AIMBOT LIVE (NOT FAKE) (2019),” which was broadcast on or around January 20, 2019 on YouTube (the “Captured Video”). On information and belief, Defendant is the streamer who originally streamed and posted the Captured Video and is the player shown cheating at Fortnite in the Captured Video.

11. In the Captured Video, the user name of the player shown cheating as well as other identifying information, (e.g., the “kill feed”—a text feed which shows the names of each player who dies and the other player who killed him or her) are blacked out on the screen. The audio, including cheating player’s voice is available. On information and belief, the voice of the cheating player is Defendant’s. Although ShelbyRenae does not identify Defendant as the cheating player, at least 15 of the commenters separately identify “Sky Orbit” – the name used by Defendant on his YouTube channel – as the player cheating in the Captured Video.

12. After the Captured Video ends, ShelbyRenae comments on what she and her viewers have just seen:

That was freaking intense. It’s just not fair to anybody else in that game who was going for their own win. They might have actually been more skilled than him or maybe they would’ve won the gun fight and he just has a complete advantage by using aimbots.² I’m assuming he’s been banned off of Fortnite at least on that account. It sounds like he gets banned a lot. But, as you might have noticed on his stream, he blacked out his name, the kill feed, and pretty much anywhere where his name might be, and I’m sure it’s very different than his YouTube username.

² “Aimbots” are a type of cheat software that automatically aims at an opposing player, allowing its user to accurately target and deal more damage to opponents.

(10:07- 10:32)

13. In a video published June 21, 2019 by CBV, another YouTuber who broadcasted videos of himself and others cheating at Fortnite, Defendant, who is this video's featured guest, discusses the above-captioned suit. In this video, which as of this writing, has over 16,000 views, Defendant says to Epic Games: "You guys can eat my ass once again!" (Available at: <https://www.youtube.com/watch?v=tRYKh19QPdc>) (hyperlink disabled). (8:54-8:59/11:40)

14. I have searched the docket of the above-captioned case for an entry of returned mail and found none. It is my understanding from speaking with the Clerk of Court's office that such an entry would have been made if any of the orders or papers served on Defendant and his mother by the Clerk were returned as undeliverable or returned for any other reason.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of October, 2019.



Christopher M. Thomas

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **THIRD DECLARATION OF CHRISTOPHER M. THOMAS** was electronically filed this day with the Clerk of Court using the CM/ECF system and is available to C.R. c/o Lauren Rogers via PACER and copies have been served on C.R. c/o Lauren Rogers at the addresses below.

5 Vireo Circle
Newark, DE 19711

501 West Ave.
New Castle, DE 19720

This the 9th day of October, 2019.

/s/ Christopher M. Thomas
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